

Office of Personnel Management

§ 351.608

for any deviation from the order of release required by § 351.601 or § 351.605.

[62 FR 10682, Mar. 10, 1997]

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) *General.* (1) In accordance with this section, an agency may make a temporary exception to the order of release in § 351.601, and to the action provisions of § 351.603, when needed to retain an employee after the effective date of a reduction in force. Except as otherwise provided in paragraphs (c) and (e) of this section, an agency may not make a temporary exception for more than 90 days.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart E, of this chapter, or equivalent programs.

(b) *Undue interruption.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to the retained employee without regard to the 90-day limit set forth under paragraph (a)(1) of this section.

(d) *Sick leave.* An agency may make a temporary exception to retain on sick leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other applicable leave system for Federal employees), who is on approved sick leave on the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees). Except as authorized by § 351.606(b), an agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (d).

(e)(1) An agency may make a temporary exception to retain on accrued annual leave a lower standing employee who:

(i) Is being involuntarily separated under this part;

(ii) Is covered by a Federal leave system under authority other than chapter 63 of title 5, United States Code; and,

(iii) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority), and/or establish eligibility under 5 U.S.C. 8905 (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (e).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave

that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) *Other exceptions.* An agency may make a temporary exception under this section to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

(g) *Notice to employees.* When an agency approves an exception for more than 30 days, it must:

(1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

(2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

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Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction, or the least possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is

released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraph (a) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup-retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup; and

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent). (The agency uses the grade progression of only the released employee's position of record to determine the applicable grades (or appropriate grade intervals or equivalent) of the employee's retreat right. The agency does not consider the grade progression of the position to which the employee has a retreat right.); and

(3) Is the same position, or an essentially identical position, formerly held by the released employee on a permanent basis as a competing employee in a Federal agency (*i.e.*, when held by the released employee in an executive, legislative, or judicial branch agency, the position would have been placed in tenure groups I, II, or III, or equivalent). In determining whether a position is essentially identical, the determination is based on the competitive level criteria found in § 351.403, but not necessarily in regard to the respective